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Subject:—

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Opinions under the Bombay Civil Services Rules.

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Submitted.

On receipt of an application from the monthe of Abdul Sator walad Shaikh Ismail late forest guard, Government decided to grant a compassionate gratuity of Rs.120/- under rule 301 A of the B.C.S. Rules Vol. I The deceased guard has left 5 dependents, his mother and his daughter from his first wife living together but separately from the other three, namely , his second wife and her minor son and daughter. The Chief Conservator of Forests reported that his arrears of pay was distributed according to the Mahomedan law of succession on the strength of the opinion given by the Dist. Govt Pleader Dharwar, and that compassionate gratuity should also be distributed accordingly. The R.A. points out that if the grantuity is distributed as suggested above, the mother of the deceased who is the applicant in this case will get nothing. The question for consideration of the R.L.A. is whether it is obligatory on Govt. to distribute the amount of the compassionate gratuity according to the Mahomedan Law of Sussession.

2. The rules regulating the grant of gratuities from the Compassionate Fund to families of Government Servants left in indigent circumstnces through the premature death of the person upon whom they depended for support are printed in section A to

appendix A of the B.C.S. Rules. Vol.II
(pp. 78-79). The conditions which regulate a grant
from the fund are stated in Rule 2
Sub-rule (1) of the said Rule 2
provides that the grant from the Fund
are restricted to cases of exceptional
character; sub-rules (4) provides that in
more ordinary cases reference should be
given to the dependants of govt servants
who have complete many years' service and
have just failed to earn a pension.
Rules 3(2) lays down that the precise amou
of gratuity in all cases is fixe according
to the number of members in the family and
the necessities of the case. The Compassion-
ate Fund is administered by a Committee.
The "family" as defined by the B.C.S Rule
9(18) includes a Govt servant's wife, Vide Vol I, D
legitimate children and mother residing
with and wholly dependent upon him. It
would appear therefore that all the members
of the deceased guard's family including the mother
would be entitled to the compassionate gratuity
proposed to be granted by Government. There
is no provision in the Rules that the
gratuity sanctioned should be distributed
according to the Mahomedan Law of Succession
The grant of compassionate gratuity appears
to be in the discretion of Govt and it is
not obligatory on Govt to distribute the
amount in the present case according to the
Mahomedan Law of Succession
Cf. R.L.A. opinion No. 178/C.S.R.87/31 dated 20/1/1931/..file C.S.R./31
Id/21/2

It is true that the arrears of pay of the deceased forest guard which formed part of his property or estate will divisible among his heirs acc rdinge to the law of succession but the same thing cannot be said of the discretionary compassionate

It is true that the arrears of pay of the deceased forest guard which formed part of his property or estate were divisible among his heirs according to the law of sucession; but the same thing cannot be said of the discretionary compassionate gratuity granted by Government to his family. The relevent personal law of sucession to the prpperty of the deceased Government servant will have no application to any such grant which is made not to the deceased but to his surviving family.

2. The rules regulating the grant of gratuities from the compassionate fund to families of Government servants left in indigent circustances through the premature death of the peren upon whom they depended for support are printed in section A of Appendix XII-A to the Bombay Civil Services Rules. (See rule 301A of the Bombay Civil Services Rules). Clause 1 of section A in Appendix XII-A says that the compassionate fund is intended for the relief of families of Government servants paid monthly from Provincial revenues whether their rates of pay are fixed on a d ily or monthly basis if they are left in indigent circumstances. "Family" as defined in rule9(18) of the Bombay Civil Services Rules includes a mother. Consequenly the mother of the deceased forest guard would ordinarily be entitled to claim a part of the com assionate gratuity if any such gratuity is granted to the family of the deceased. How the com assionate gratuity should be distributed between the members of the family of the deceased would be a matter entirely within the discretion of the committee administering the compassionate fund and the law of succession would not govern such distribution since the grant itself is entirely in the discretion of such

committee and does not in any way add to or form any part or the assets left by the deceased.

Sd/-
12/3/

Encumbrancer of Legal Affairs.

U.R. to the R.D., No 2317 dated the 14th March 1941.

Tr/13/4

Mr. Desai a Government pensioner applied on 1st October 1940 for commutation of a part of his pension and administrative sanction for commutation was given by Government on 4th February 1941. He was examined by the Medical Board, Bombay, on 12th February 1941. The Board certified that his age for the purpose of commutation should betaken to be 58 years on his next birthday. Mr. Desai's next birthday fell on 13th February 1941 but as that date had already passed the Accountant General held that Mr. Desai's age should be taken for the purpose of commutation to be 59 years and on that basis Mr. Desai was given an intimation on 7th April 1941 of the revised sum payable to him. Mr. Desai should have exercised within two weeks i.e. on or before 21st April 1941 the option given to him under rule 320 (1) of the Bombay Civil Services Rules i.e. he should have withdrawn his application on or before 21st April 1941 if he were unwilling to accept the commutation offered to him Instead of doing so he wrote to Government on 20th April 1941 requesting for an enquiry as to how 4 years instead of 3 years as recommended by the Medical Board came to be added and stated inclear terms in the concluding part of that letter that he was badly in need of money and that he did not want to decline the proposal. Later on however he changed his mind and on 22nd April 1941 addressed a letter to Government withdrawing his application for commutation. This letter was clearly beyong the prescribed period of time for withdrawal. On these facts the questions raised for consideration of the R.L.A. are:-

(1) whether Mr Desai's letter of 20th April 1941 (p.31 ante) amounted to acceptance of the commutation, and therefore had the effect of making that commutation absolute;

(2) If not whether the commutation became absolute on the ground of non-withdrawal during the period of option

(3) In either case, whether it is now open to Government-

(a) to rescind the commutation o-

(b) to permit Mr. Desai to contract himself out of the connection on suggested by the Accountant General.

(4) In what manner either of these courses (3)(a) and (3)(b) can be giveneffect to consistently withany legal rights which may have accrued (or may accrue) from a commutation which has become absolute; and

(5) Whether it is open to Government in pursuing either of the above course, to impose suitable restrictions

2. Questions (1)and(2) :- Subrule(1) of rule 320 of the Bombay Civil Services Rules inter alia provides:"If the medical authority directs that hi s age for the purpose of commutation shall be assumed to be greater than his actual at-, the applicant may withdrew his application by wirtten notice despatched within two weeks from the date on which he received intimation of the revised sum a able on commutation or, if this sum is already stated in the sanctioning order, within two weeksfrom the date on which he recei es intimation of the finding of the Medical authorit-. If the applicant does not withdrew inwriting is a licationwithin the period of two weeks prescribed above, he shall be deemed to have accepted the sum offered".It is clear from this rule 320(1) that the applicant must withdrew in writing his application within to prescribed time if the is unwilling to accept com utation and there can be thus no conditional withdrawal or conditional acceptance. The period of two weeks within which the a plicant is required to exercise his option is prescribed for the purposes of enabling the a plicant to arrive at a decision after full and mature consideration Mr. Desai's letter dated the 20th April 1941 the pensioner's provisions letter furnishes a clear indication of his decision not to

withdrew his application for commutation which in effect amounted to acceptance. His subsequent withdrawal after the prescribed period of time cannot revoke the choice once made within the prescribed time. Consequently the commutation has become absolute in either case.

3. Questions (3) and (4)- Under rule 315(b) the commutation of any part of a pension is a concession and Government reserves to itself the discretion to refuse commutation in any case without stating reasons and under rule 323 a commutation once applied for, sanctioned and given effect to, cannot be rescinded i.e. the portion of a pension commuted cannot be restored on refund of its capitalised value. It is true that in the present case commutation was applied for and sanctioned by Government but it has not yet been given effect to. However by reason of Mr. Desai's failure to withdraw his application in time the commutation has become absolute under rule 320(1). In these circumstances it would not be legal for Government to rescind the commutation without the consent of the pensioner Mr. Desai. It is open to a person to contract himself out of a statute Consequently on taking the pensioner's Mr. Desai's consent in writing Government may pass an order under rule 315 read with rule 323 rescinding the commutation.

4. Question (5)- Under rule 321(vi) it appears that a pensioner who has declined to accept commutation on the basis of an addition of years to his actual age recommended by the medical authority can be allowed one more chance at the discretion of Government. Consequently it would be necessary for Government to take an undertaking from him Mr. Desai not to apply again for commutation before rescinding commutation in present case.

Sd/-
10/7
Remembrancer of Legal Affairs

U.O. No. F.D. No 6027 dated the 11th July 1941

9958
27-10-41

Submitted-

2. It is proposed to substitute the following note for the note below rule 3 (d) of the Bombay Civil Services Classification and Recruitment Rules, 1939.

"Note- For the purposes of these Rules, the domicile of a peson shall be determined in accordance with the procedur prescribed in Appendix I". and to insert in the said Rules as Appendix I, Rules, Questionarire and Instructions for the dterminnation of domicile for the urposes of the Bombay Civil Services Classification and Recruitment Rules, as appended to G.R., P.W.S.D., No. 1586/34/III, dated 1st November 1940. These Rules have not yet been incorported in the Bombay Civil Services classification and Recruitment Rules, 1939- Part I of the proposed Appendix I, provides for the provisions for the determination of domicle, Part II prescribes the questionaire to be f in by candidates for appointment and Part III prescribes instructions regarding the scrutiny of domicile and the grant of ce tificates of domicile. Instructior of Part III provides that save as provided in Instruction 9, every candidate for appointment who claims to have a domicile

in the Province of Bombay must produce a certificar of his domicile in the form prescribed in the annxure to Instructions from the District Magistrate of the District in which such candidate resides or from a stipendiary Magistrate authorised by the District Magistrate in this behalf. or. if such candidate resides in the City of Bombay, either with the Chief Presidency Magistrate, Bombaym or from a Stipendiary Magistrate authorised by the Chief Presidency Magistrate in that behalf.'

The question for consideration of R.L.A. is whether a certificate granted by a Magistrate under Instruction I of Part III of the Rules, Questionaire and Instructions for the determination of domicilecan be rejected by the appointing authority, e.g. D.P.I, if he is of the opinion that the candidate in question does not in fact possess the prescribed qualification re. domicile.'

3. The proposed revised note to rule 3(d) and the proposed Appendix I containing the Rules, Questionnaire and Instructions for the determination of domicile, when incorpprated, will form part of the Bombay Civil Services Classification and Recruitment Rules, 1939.' These rules are statutory rules issued under sub-sections (1)(b) and 2(b) of section 241 and section 255 of the Govt. of the India Act, 1935.' The revised note to rule 3 provides that for the purposes of the Rules, the domicile of a person shall be determined in accordance with the procedure pre-scribed in Appendix I. Under Instruction 2 read

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The note to rule 3(d) of the Recruitment Rules and the rules in the Appendix I as proposed by Government under G.R. (P.&S.D.) No 1586/34/III, dated the 1st November 1940, are not yet incorporated in the Bombay Civil Services Classification and Recruitment Rules, 1939. The rules in Part I and the domicile questionnaire in Part II in the accompaniment to G.R. (p.& S.D.) No. 1586/34-III, dated the 1st November 1940, are therefore in the nature of executive instructions. Consequently a certificate of domicile issued by the Chief Presidency Magistrate or District Magistrate as provided in paragraph 2 of the aforesaid Government Resolution cannot in law have any binding force as against Government even though the procedure prescribed in the accompaniment thereto has been strictly followed Moreover, rule 10 of the rules in Part I of the accompaniment to the G.R. itself provides for power of Government to decide finally any question relating to the domicile of any person at the time of his appointment. That being so, it would be open to Government to reject the certificate of domicile issued to a candidate by the Chief Presidency Magistrate or District Magistrate if it appears to Government that the candidate has in fact no domicile in the Province within the meaning of rule 3(d) of the Recruitment Rules. The view expressed by D.(Secy.)p.& S.D.) in para 5 of his note at p. 20 ante is correct

Sd/- 18/11
Remembrancer of Legal Affairs.

U.R. to P. & S.D., No 9980 dated 19-11-1941

Mr/20/4

21/5